THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7422 of 2006

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the impugned order in G.O.Rt.No.560 dated 14.3.2006 as arbitrary and illegal and also consequently to set aside the award dated 23.12.2004 in I.D.No.10 of 2004 on the file of the Industrial Tribunal-II, Hyderabad.

It appears, the petitioner-Federation raised a dispute before the Conciliation Officer and in turn, the Conciliation Officer referred the matter to the Government for being considered for reference to the Labour Court. Initially by proceedings dated 18.10.2004, the Government of A.P. referred the dispute to the Labour Court under Section 10(1) of the Industrial Disputes Act, 1947. Therefore, a claim statement was filed by the petitioner Union. While that being so, the impugned G.O.Rt.No.560 dated 14.3.2006 was issued withdrawing the reference made under G.O.Rt.No.1945 dated 18.10.2004. As a natural corollary, the Labour Court dismissed the claim petition i.e. I.D.No.10 of 2004 on 23.12.2004. Questioning the withdrawal of earlier reference as well as the dismissal of I.D., the present writ petition is filed.

Before passing the impugned G.O., when the cancellation orders were passed withdrawing the earlier reference, the petitioner filed W.P.No.24759 of 2004 and the same was allowed on 29.11.2005 directing the Government to afford opportunity to the Petitioner-Association and pass appropriate orders. Now the impugned G.O.Rt.No.560 dated 14.3.2006 has been issued stating that withdrawal of reference is justified since the Sales Promotion Employees are not workmen and they cannot raise the dispute under the I.D. Act.

There is no necessity of going into all the details.

A similar question arose before the apex Court in **H. R. Adyanthaya**

v. Sandoz (India) Ltd.,[1] and para 4 of the said judgment reads as under:

> We may now refer to the relevant provisions of the Sales Promotion Employees (Conditions of Service) Act, 1976 (the 'SPE Act') which came into force w.e.f. 6th March, 1976 and applied forthwith to every establishment engaged in pharmaceutical industry by virtue of its S. 1(4). The definition of the Sales Promotion Employee in cl. (d) of S. 2 of the SPE Act as it was originally enacted read as follows :
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> "(d) "sales promotion employee" means any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both and -
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> (i) who draws wages (being wages, not including any commission), not exceeding seven hundred and fifty rupees per mensem; or
>
> (ii) who had drawn wages (being wages, including commission), or commission only, in either case, not exceeding nine thousand rupees in the aggregate in the twelve months immediately preceding the months in which this Act applies to such establishment and continues to draw such wages or commission, in the aggregate, not exceeding the amount aforesaid in a year;
>
> but does not include any such person who is employed or engaged mainly in a managerial or administrative capacity;"
>
> It will be noticed that under the SPE Act, the sales promotion employee was firstly, one who was engaged to do any work relating to promotion of sales or business or both, and secondly, only such of them who drew wages not exceeding Rs. 750/- per mensem (excluding commission) or those who had drawn wages (including commission) or commission not exceeding Rs. 9,000/-per annum whether they were doing supervisory work or not were included in the said definition. The only nature/type of work which was excluded from the said definition was that which was mainly in managerial or administrative capacity.
>
> The SPE Act was amended by the Amending Act 48 of 1986 which came into force w.e.f. 6-5-1987. By the said amendment, among others, the definition of sales promotion employee was expanded so as to include all sales promotion employees without a ceiling on their wages except those employed or engaged in a supervisory capacity drawing wages exceeding Rs. 1600/- per mensem and those employed or engaged mainly in managerial or administrative capacity.
>
> Section 6 of that Act made the Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, (the ID Act), Minimum

Wages Act, 1948, Maternity Benefit Act, 1961. Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972, applicable forthwith to the medical representatives. Sub-section (2) of the said section while making the provisions of the ID Act, as in force for the time being, applicable to the medical representatives stated as follows:

"(2) The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall apply to, or in relation to, sales promotion employees as they apply to, or in relation to, workmen within the meaning of that Act and for the purposes of any proceeding under that Act in relation to an industrial dispute, a sales promotion employee shall be deemed to include a sales promotion employee who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment had led to that dispute."

In other words, on and from 6th March, 1976 the provisions of the ID Act became applicable to the medical representatives depending upon their wages up to 6th May, 1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged.

In view of the above, since there was an amendment to Section 6 of Sales Promotion Employees (Conditions of Service) Act, 1976 with effect from 6.5.1987 enabling to treat the dispute raised by the employee who was getting even more than Rs.750/- per month as Industrial Dispute withdrawing the reference made is illegal and invalid.

The learned counsel for petitioner further relied on a judgment reported in **Ripu Daman Bhanot v. The Presiding Officer, Labour Court, Ludhiana**[2] wherein similar questions arose for the purpose of consideration and the decision made by the Labour Court that the employees under sales promotion act cannot maintain the dispute under I.D. Act was set aside.

Whereas, the learned counsel for respondents states that after the judgment of **H. R. Adyanthaya** (supra), various High Courts in the country have taken a different view into the very same question and ultimately the matter was again landed before the apex Court and it is under consideration and therefore, the writ petitioners may await for the decision. I am not in

agreement with the submission made by the learned counsel for respondents.

In view of the judgment reported in H.R.Adyanthaya (supra), the Industrial Disputes Act became applicable to the medical representatives depending upon their wages up to 6th May, 1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged. Therefore, the impugned G.O.Rt.No.560 dated 14.3.2006 issued by the Government is liable to be set aside and accordingly set aside. As a natural corollary, the award passed by the Labour Court in I.D.No.10 of 2004 dated 23.12.2004 is also set aside and it must be deemed that G.O.Rt.No.1945 dated 18.10.2004 issued earlier is valid and in force and the I.D. shall be restored to the file of the Labour Court and tried according to law.

The writ petition is accordingly allowed. No order as to costs.

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C.V.RAMULU, J

Date: 19.2.2007

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19.2.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.7422 of 2006

Date: 19th February, 2006

Between:

Federation of Medical and Sales Representatives
Association of India, rep. by its General Council Member,
Jambagh, Hyderabad.

.. Petitioner

And

The Government of Andhra Pradesh,
represented by its Principal Secretary,
Labour, Employment, Training and Factories
(Lab-I) Department, Secretariat, Hyderabad & others.

.. Respondents

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[1] AIR 1994 SC 2608

[2] 1996 LLR 1008